

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

BALWANI *et al.*

Application No.: 10/665,220

Filed: September 17, 2003

For: **Decongestant/Antihistaminic/
Expectorant Compositions**



Confirmation No.: 6274

Art Unit: 1614

Examiner: (To be assigned)

Atty. Docket: 2286.0330000/BJD

Petition to Withdraw Holding of Abandonment under 37 C.F.R. §1.181(a)

Mail Stop: Petition

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

It has come to the attention of Applicants' undersigned representative that the above-referenced application has been listed as abandoned in the records of the U.S. Patent and Trademark Office (USPTO). Specifically, upon conducting an online status check via the USPTO Patent Application Information Retrieval (PAIR) website, the undersigned discovered that this application had been listed as abandoned as of January 10, 2005, apparently for alleged failure to reply to a Notice to File Missing Parts mailed by the USPTO on November 9, 2004. However, a Notice of Abandonment was never received by Applicants.

Applicants respectfully request that this holding of abandonment be withdrawn, because the Notice to File Missing Parts dated November 9, 2004, was issued in error, and because in any event, a full reply to the Notice was made by Applicants within the time period for replying thereto. Therefore, the holding of abandonment in the present case is in error, and should be withdrawn.

BEST AVAILABLE COPY

In support of this request, Applicants provide the following statement of facts and evidence:

A. A Notice to File Missing Parts of Nonprovisional Application was Mailed to Applicants on December 19, 2003 (copy attached as Exhibit A). The Notice indicated that a signed oath or declaration and \$130 late Oath or Declaration surcharge were required to be submitted by February 19, 2004 (extendable to July 19, 2004).

B. On December 23, 2003, Applicants filed a reply to the Notice to File Missing Parts, including a Transmittal Letter with a First Class Certificate of Mailing dated December 23, 2003 (copy attached as Exhibit B); a copy of the Notice to File Missing Parts (Exhibit A, above); an executed Declaration, signed and dated by the inventors (copy attached as Exhibit C); and a check in the amount of \$130 (copy attached as Exhibit D). A copy of the return receipt postcard, bearing the USPTO date stamp of December 29, 2003, acknowledging receipt of these items, is attached as Exhibit E.

Applicants note that the transmittal letter and return receipt postcard listed the incorrect application number (10/655,220). However, both documents correctly indicated the last name of the first-listed inventor (Balwani), as well as the filing date (September 17, 2003) and title ("Decongestant/Antihistaminic/Expectorant Compositions") of the application. In addition, the executed Declaration set forth the correct application number (10/665,220), the correct title and filing date of the application, and properly listed all of the inventors. Furthermore, the copy of the Notice

to File Missing Parts submitted with the Reply and Declaration indicated the correct application number, correct filing date and first-listed inventor. There is no indication on public PAIR that this submission was matched with either of the application numbers noted above.

C. On November 9, 2004, a Withdrawal of Previously Sent Notice was mailed by the USPTO (copy attached as Exhibit F), indicating that the Notice to File Missing Parts mailed on December 29, 2003, was sent in error and was therefore withdrawn. In addition, a Corrected Notice to File Missing Parts was also mailed on November 9, 2004 (copy attached as Exhibit G), indicating that a signed Oath or Declaration was still missing from the application.

D. On November 19, 2004, Applicants filed a Reply to the Corrected Notice to File Missing Parts dated November 9, 2004, in the USPTO via facsimile (copy of the facsimile confirmation report attached as Exhibit H). The Reply included a Transmittal Letter (copy attached as Exhibit I); a copy of the Corrected Notice to File Missing Parts (Exhibit F, above); a copy of the transmittal letter dated December 23, 2003 (Exhibit B, above); a copy of the Notice to File Missing parts dated December 19, 2003 (Exhibit A above); and a copy of the executed Declaration (Exhibit C, above).

The transmittal letter sent with the November 19, 2004 submission (Exhibit I, above) also incorrectly listed the application number as 10/655,220. However, it correctly identified the last name of the first-listed inventor (Balwani), as well as the correct title and filing date of the application. As noted above, the executed Declaration

filed with the facsimile submission of November 19, 2004 set forth the correct application number (10/665,220), the correct title and filing date of the application and properly listed all of the inventors. In addition, the copy of the Notice to File Missing Parts and the Corrected Notice to File Missing Parts also indicated the correct application number, correct filing date and first-listed inventor.

It appears, through USPTO error, that the Reply to the Corrected Notice to File Missing Parts and the Declaration filed via facsimile on November 19, 2004, were not matched with the proper application. Instead, as a review of public PAIR indicates, the declaration was actually scanned and matched with the incorrect application number listed on the postcard and transmittal letter (10/655,220) (*see* printout from public PAIR, documents received on November 19, 2004, attached as Exhibit J).

Applicants respectfully submit that, the transmittal documents submitted with both Replies noted above contained the correct title, first-listed inventor, and filing date for the present application, despite an inadvertent typographical error made in the application number on these documents. In addition, the Declaration filed with these Replies set forth the correct application number (as well as the other identifying information noted in M.P.E.P. § 602), which should have been used to match these submissions with the appropriate file.

The transmittal documents accompanying the Replies were not formal documents or USPTO forms, and thus, should not have been relied up on by the USPTO as the basis for determining the application to which the Declaration and remaining documents

corresponded. As required by 37 C.F.R. § 1.63, the Declaration submitted with the Reply filed on December 23, 2003, and the facsimile Reply filed on November 19, 2004, properly identified the application to which it was directed by: (1) listing the application number of the application provided by the USPTO on the Official Filing Receipt; (2) listing all of the inventors; (3) listing the filing date; and (4) listing the title of the invention which was on the specification as filed (*see* M.P.E.P. § 602, 600-29). Applicants respectfully submit that the information provided on the executed Declaration should have taken precedent over that listed on the transmittal documents, and should have been used by the USPTO when matching the submission with an application.

Thus, Applicants submit that the executed Declaration and \$130 surcharge were timely submitted to the USPTO within the time periods set forth by the Notice to File Missing Parts dated December 23, 2003, as well as the Corrected Notice to File Missing Parts dated November 19, 2004, as evidenced by return receipt postcards bearing the USPTO date stamps. The Declaration and \$130 fee should have been matched with Application No. 10/665,220, as listed on the Declaration. Therefore, Applicants submit that a full and complete Reply to the Notice to File Missing Parts was timely filed.

In view of the foregoing, Applicants respectfully submit that the present application was abandoned in error by the USPTO. Accordingly, Applicants respectfully request that the Notice of Abandonment be withdrawn and that the application be immediately returned to pending status and forwarded to the appropriate Art Unit for examination.

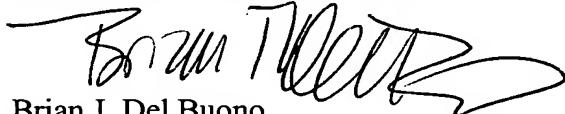
As set forth in M.P.E.P. § 711.03(c)I, Applicants note that submission of this petition does not require a fee. However, if such a fee is required, it is hereby authorized to be charged to our Deposit Account No. 19-0036.

As required by M.P.E.P. § 711.03(c)I, Applicants submit herewith a Terminal Disclaimer to Accompany Petition disclaiming the period of abandonment of the application. Also submitted herewith is the \$65 fee for a small entity required under 37 C.F.R. § 1.20(d) for the terminal disclaimer.

Prompt and favorable consideration of this Petition are respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Brian J. Del Buono
Attorney for Applicants
Registration No. 42,473

Date: October 21, 2005

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

446279_1.DOC



UNITED STATES PATENT AND TRADEMARK OFFICE

Exhibit A
Appl. No. 10/665,220

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/665,220	09/17/2003	Gul Balwani	

Raymond E. Stauffer, Esq.
c/o Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein
6 Becker Farm Road
Roseland, NJ 07068

CONFIRMATION NO. 6274

FORMALITIES LETTER



OC000000011534304

Date Mailed: 12/19/2003

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$130 for a non-small entity, must be submitted with the missing items identified in this letter.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$130** for a Large Entity

- **\$130** Late oath or declaration Surcharge.

Items Required To Avoid Processing Delays:

The item(s) indicated below are also required and should be submitted with any reply to this notice to avoid further processing delays.

- A new oath or declaration, identifying this application number is required. The oath or declaration does not comply with 37 CFR 1.63 in that it:
- does not identify the citizenship of each inventor.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents

P.O. Box 1450
Alexandria VA 22313-1450

*copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Patent Examining Operations

Applicant(s): Balwani, et al.

Serial No: 10/655,220

Filed: September 17, 2003

Title: Decongestant/Anthistaminic/Expectorant Compositions

Customer No.: 27162

Attorney

Docket No.: 452005-150

TRANSMITTAL LETTER

Mail Stop Missing Parts

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

SIR:

Enclosed please find the following:

1. Copy of Notice to File Missing Parts;
2. Executed Declaration;
3. Check in the amount of \$130.00 –
4. A self-addressed, postage paid, return receipt postcard, date stamp and return of which is respectfully requested.

The Commissioner is authorized to charge payment of any additional filing fees required under 37 C.F.R. 1.16 associated with this communication or credit any overpayment to Deposit Account No. 03-0678.

FIRST CLASS CERTIFICATE

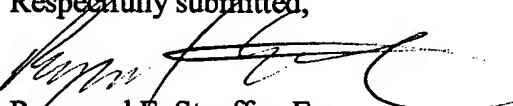
I hereby certify that this correspondence is being deposited today with the U.S. Postal Service as First Class Mail in an envelope addressed to:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Raymond E. Stauffer, Esq.

Date

Respectfully submitted,


Raymond E. Stauffer, Esq.
Reg. No. 47,109

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Five Becker Farm Road
Roseland, New Jersey 07068
T: (973) 994-1700
F: (973) 994-1744

DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

DECONGESTANT/ANTIHISTAMINIC/EXPECTORANT COMPOSITIONS

the specification of which is attached hereto or was filed on 17 September 2003 as Application Serial No. 10/665,220 and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37 Code of Federal Regulations Section 1.56(a).

I hereby claim foreign priority benefits under Title 35 United States Code Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed. Prior Foreign Application(s):

			Priority Claimed
(Number)	(Country)	(Day/Month/Year Filed)	Yes <input type="checkbox"/> No <input type="checkbox"/>

I hereby claim the benefit under Title 35 United States Code Section(s) 119 and/or 120 of any United States application(s) listed below and insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35 United States Code Section 112 I acknowledge the duty to disclose material information as defined in Title 37 Code of Federal Regulations Section 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

(Application Serial No.)	(Filing Date)	(Status – pending provisional, patented, pending, abandoned)
(Application Serial No.)	(Filing Date)	(Status – pending provisional, patented, pending, abandoned)

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: John N. Bain (Reg. No. 18,651); John G. Gilfillan, III (Reg. No. 22,746); Elliot M. Olstein (Reg. No. 24,025); Raymond J. Lillie (Reg. No. 31,778); William Squire (Reg. No. 25,378); Alan J. Grant (Reg. No. 33,389); Francis C. Hand (Reg. No. 22,280); Glennon G. Troublefield (Reg. No. 39,050); and Raymond E. Stauffer (Reg. No. 47,109). Address correspondence and telephone calls to Raymond E. Stauffer, Esq., c/o Carella, Byme, Bain, Gilfillan, Cecchi, Stewart & Olstein, 6 Becker Farm Road, Roseland, NJ 07068 - (973) 994-1700.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor: Gul Balwani

Inventor's signature Gul Balwani Date 11/13/03

Residence 6 Robert Drive Citizenship _____

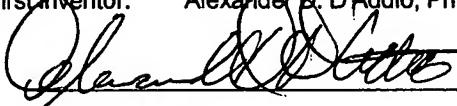
Princeton Junction, NJ 08550

Post Office Address _____

Docket. No. 452005.150

197753v1

Full name of sole or first inventor: Alexander B. D'Addio, Ph.D.

Inventor's signature 

Date 11/13/03

Residence 39 Ballas Lane

Citizenship USA

Piscataway, NJ 08854

Post Office Address

Full name of sole or first inventor: Jeff Gazzara

Inventor's signature 

Date November 12, 2003

Residence 31 Christopher Mills Drive

Citizenship

Mount Laurel, NJ 08054

USA

Post Office Address

Full name of sole or first inventor: Phuong Grace Dang

Inventor's signature 

Date 11/13/03

Residence 4 Redwood Court

Citizenship

West Windsor, NJ 08550-5137

USA

Post Office Address

Docket. No. 452005.150

197753v1

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein P.A.
ATTORNEY BUSINESS ACCOUNT REIMBURSEMENT ACCOUNT
5 BECKER ROAD, ROSELAND, NEW JERSEY 07068

Exhibit D
Appl. No. 10/665,220

CHECK DATE: 12-23-2003

CHECK NO. 3259

PAYEE: HON. COMMISSIONER OF PATENTS

CLIENT:

CHECK AMOUNT:

\$130.00

OUR FILE: 452005.130

REQUESTED BY:

Kelly/RES

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein P.A.
ATTORNEY BUSINESS ACCOUNT REIMBURSEMENT ACCOUNT

5 BECKER FARM ROAD, ROSELAND, NEW JERSEY 07068

Check No: 3259

55-653/212

NoCrown
270 S Livingston Avenue
Livingston, NJ 07039

DATE: 12-23-2003

CHECK AMOUNT

\$130.00

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PAY HON. COMMISSIONER OF PATENTS
TO THE
ORDER OF

Melvin S. Bain
VOID AFTER 180 DAYS

113259 1021206537 2111300238

Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein P.A.
ATTORNEY BUSINESS ACCOUNT REIMBURSEMENT ACCOUNT
5 BECKER ROAD, ROSELAND, NEW JERSEY 07068

CHECK DATE: 12-23-2003

CHECK NO: 3259

PAYEE: HON. COMMISSIONER OF PATENTS

CLIENT:

CHECK AMOUNT: \$130.00

OUR FILE: 452005.130

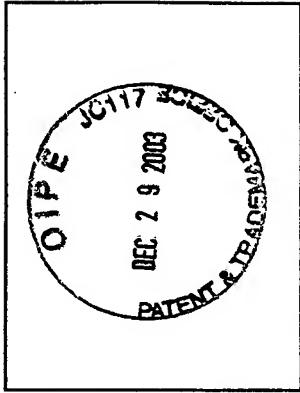
REQUESTED BY: *Kelly/RES*



Please date stamp and return to addressee on reverse side

Applicant(s): Balwantri, Lalat

Serial No.: 10/655,220 Filed: September 17, 2003
 Title (or mark): Decongestant/Anesthetic/
Expectorant/CompositiOns



DOCUMENTS ENCLOSED

Application sheets: Descr.: _____
 Drawing sheets: _____

Declaration (executed 11-12-03 & 11-13-03)
 Verified Statement Claiming Small Entity Status
 Response to OA dated Mo. Ext. of Time

Other Copy of Notice to File Missing parts Check Amount \$ 130.00 No. _____

Formal Drawing _____ sheets
 First class mail
 Certificate Dated: December 23, 2003
 Docket No.: US2005-150

Claims _____
 Formal Assignment to _____
 Abstract _____
 Informal

Type of OA: _____
 Inform. Discl. Statement
 Trans. Letter

Express Mail Label No.: _____
 Deposited on: RE
 Atty.: _____



UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/665,220	09/17/2003	Gul Balwani	

Raymond E. Stauffer, Esq.
c/o Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein
6 Becker Farm Road
Roseland, NJ 07068

CONFIRMATION NO. 6274
WITHDRAWAL NOTICE

OC00000014327138

Date Mailed: 11/09/2004

WITHDRAWAL OF PREVIOUSLY SENT NOTICE

The Notice mailed on 12/19/2003 was sent in error and is hereby withdrawn. A corrected Notice is enclosed. The time period for reply runs from the mail date of the corrected Notice. We apologize for any inconvenience this caused.

*A copy of this notice **MUST** be returned with the reply.*

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Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/665,220	09/17/2003	Gul Balwani	452005-150

Raymond E. Stauffer, Esq.
c/o Carella, Byrne, Bain, Gilfillan,
Cecchi, Stewart & Olstein
6 Becker Farm Road
Roseland, NJ 07068

CONFIRMATION NO. 6274

FORMALITIES LETTER



OC000000014327147

Date Mailed: 11/09/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

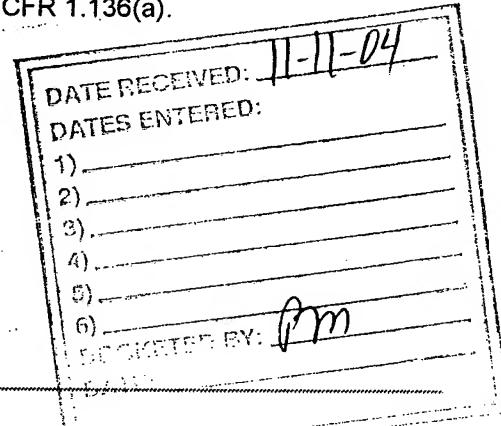
Filing Date Granted

Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450



*A copy of this notice **MUST** be returned with the reply.*

273
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

Confirmation Report - Memory Send

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Date & Time: 2004-11-19 02:53pm
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To : 17037464060
Number of pages : 008
Start time : 11-19 02:51pm
End time : 11-19 02:53pm
Pages sent : 008
Status : OK
Job number : 202 * * *

**CARELLA, BYRNE, BAIN, GILFILLAN
CECCHI, STEWART & OLSTEIN**
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700
(973) 994-1744 (FAX)

OPERATOR: kkk
TIME COMPLETED: _____
EXT. NO.: 560

DATE: November 19, 2004

OUR FILE NO.: 452005-150

NAME

FIRM: U.S. Patent and Trademark Office

FAX NO.
703-746-4060

FROM: Raymond E. Stauffer
Reg. No. 47,109

Total Pages Including Transmittal Sheet:

COMMENTS:

IF YOU HAVE ANY PROBLEMS WITH THIS TRANSMISSION, OR DO NOT RECEIVE THE NUMBER OF PAGES NOTED, PLEASE CONTACT THE FAX OPERATOR AT (973) 994-1700 (EXT. 211).

CONFIDENTIALITY NOTE: The documents accompanying this teletype transmission contain information from the law firm of Carella, Byrne, Bain, Gilfillan, Cecchi, Stewart & Olstein, which is confidential and/or legally privileged. The information contained in this facsimile is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If the one receiving it is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this teletype in error, please notify us by telephone immediately so that we can arrange for the return of the original documents to us at once. Thank you.

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2

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Messenger**

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delivery of this Document

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Patent Examining Operations

Applicant(s): Balwani, et al.

Serial No: 10/655,220

Filed: September 17, 2003

Title: Decongestant/Anthistaminic/Expectorant Compositions

Customer No.: 27162

Attorney

Docket No.: 452005-150

TRANSMITTAL LETTER

VIA FACSIMILE

703-746-4060

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

SIR:

Enclosed please find the following:

1. Copy of Notice to File Missing Parts dated November 9, 2004 that was received in error;
2. Response to original Notice to File Missing Parts dated December 23, 2003 with the Executed Declaration;

The Commissioner is authorized to charge payment of any additional filing fees required under 37 C.F.R. 1.16 associated with this communication or credit any overpayment to Deposit Account No. 03-0678.

VIA FACSIMILE

I hereby certify that this correspondence is being deposited today by Facsimile:

VIA FACSIMILE

703-746-4060

Commissioner for Patents

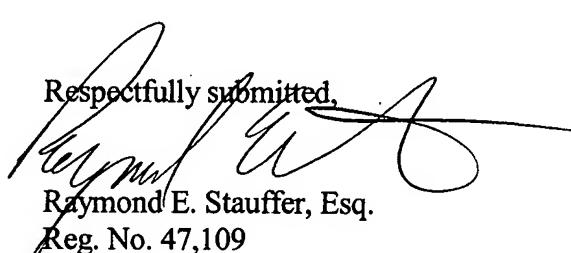
P.O. Box 1450

Alexandria, VA 22313-1450

Raymond E. Stauffer, Esq.

Date

Respectfully submitted,


Raymond E. Stauffer, Esq.
Reg. No. 47,109

CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Five Becker Farm Road
Roseland, New Jersey 07068
T: (973) 994-1700
F: (973) 994-1744



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Exhibit J Appl. No. 10/665,220

Patent Applications		- □ Patent Application Information Retrieval																																				
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